

SUBJECT: Lawyer referral services

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 8 ayes — S. Thompson, Alvarado, H. Cuellar, Goodman, Hartnett, Puente,  
Sadler, Schechter

0 nays

3 absent — P. Gallego, Hilbert, Zbranek

WITNESSES: For — Orrin Harrison III, Dallas Bar Association; Cary Jones, Travis  
County Bar Association and Travis County Bar Association Lawyer  
Referral Service. (Registered only — Kelly Inselmann, Travis County Bar  
Association Lawyer Referral Service; Delaine Ward, Travis County Bar  
Association; KaLyn Laney, State Bar of Texas; Karen Johnson, State Bar  
of Texas; Curtis Fuelberg, Texas Trial Lawyers Association)

Against — None

On — James McCormack, State Bar of Texas

DIGEST: HB 1926 would create the Texas Lawyer Referral Quality Assurance Act,  
repealing the existing lawyer referral service law (VACS 320d). The stated  
purpose of the new act would be to make sure every person in Texas has  
access to the legal system through a referral method that would consider  
the person's financial circumstances, spoken language, location and the type  
and complexity of the person's legal problem. The referral service would  
provide information to the public on lawyers and the availability of legal  
services to aid them in choosing a lawyer. The service would also provide  
referrals to lawyers who meet minimum qualifications or to pro bono legal  
programs when in the best interest of the client.

A "lawyer referral service" would mean an entity that refers potential  
clients to lawyers. The term "referral service" would not have to be used  
in order for an entity to qualify as a lawyer referral service. The term  
would not include an entity that recommends, furnishes or pays for legal  
services for its members or beneficiaries; a prepaid legal services insurance

plan; individual referrals made by one lawyer to another; lawyers who jointly advertise their services in a manner that clearly shows that the advertising is intended solely to solicit clients for those lawyers and a pro bono legal program that does not accept a fee from either the lawyer or the client.

**Certification requirements.** An entity would have to be certified by the State Bar of Texas to operate a lawyer referral service. The state bar would be authorized to adopt reasonable fees for the issuance and renewal of certificates. A certificate would be valid for one year from the date issued and could be renewed annually upon payment of the renewal fee.

Certification requirements would include operation by a governmental entity or a nonprofit entity exempt from federal income tax. An entity would have to provide a list containing at least 25 lawyers from different law firms who have contracted with the entity to be participate in the referral program.

**Lawyer participation.** A licensed attorney in good standing in the state and who had an office in the area served by the referral service could receive referrals if the lawyer did not charge a fee to referral clients that was greater than that for other clients, paid the referral service a reasonable registration and membership fee no greater than an amount set by the state bar and maintained insurance.

**Costs and fees.** A lawyer could not charge a client referred by a referral service more than the total cost of the services, including legal fees and expenses, than the client would have had to pay if a referral service had not been used. Combined charges to a client from the lawyer and the referral service could not be greater than \$30 for the first 30 minutes of the initial office visit with the lawyer. A lawyer and referral service could agree to eliminate the fee for the first 30 minutes of an initial office visit with the lawyer.

A lawyer referral service could receive as compensation for services and in addition to the referral fee, a percentage of the lawyer's fees ultimately received by the lawyer or firm. The fee would not constitute the sharing of legal fees with a nonlawyer in contravention of the rules of professional

conduct. The fee would have to be included in the agreement between the lawyer and the referral service and be disclosed to the client in accordance with the rules governing lawyer conduct. The fee would be used to pay operating expenses of the referral service and to pay for public service programs, including pro bono legal programs.

**Insurance requirement.** A referral service would be prohibited from entering into an agreement with a lawyer who did not have an errors and omissions insurance policy with at least \$100,000 coverage for each occurrence and \$300,000 per year. The state bar could require that the insurance coverage be increased or provide that an alternative proof of financial responsibility be shown.

**Subject matter panels.** A referral service would be required to establish specific subject matter panels and could establish moderate and no-fee panels, alternative dispute resolution panels and other special panels according to the needs of the public.

**Comments and complaint procedures.** A referral service would be required to establish policies and procedures to determine the level of client satisfaction with the services and to deal with client complaints.

**Suspension and removal of lawyers and firms.** A referral service would also have to establish policies and procedures to suspend or remove a lawyer or firm from the service's list of participants. The policies and procedures would have to provide for the suspension and removal of a lawyer who failed to handle referred clients in a diligent and responsible manner.

**Notice requirements.** A referral service would have to include a statement claiming it is a certified lawyer referral service as required by the state of Texas in all advertising and promotions.

**Rules and enforcement.** The state bar would be required to adopt reasonable rules, subject to the approval of the Supreme Court, to administer lawyer referral services. The state bar would be authorized to enforce any rule that it adopts that has been approved by the Supreme Court.

**Injunction.** The state bar or a certified lawyer referral service could seek to enjoin any violation of the act and could recover attorneys' fees and costs related to obtaining the injunction. The state bar or a referral service would not be required to post a bond or other security as a condition of issuance of an injunction.

The bill would take effect September 1, 1993. A lawyer referral service would not be required to obtain certification before December 1, 1993.

**SUPPORTERS  
SAY:**

The current rules governing lawyer referral services need to be revised. The current system does not specify the process to be used when certifying referral services nor does it provide for the establishment of a regulatory body to enforce rules and monitor the practices of referral services. HB 1926 would provide a framework for assuring some level of quality for lawyer referral services.

The bill would prevent referring clients to a single lawyer or law firm by requiring a referral service to show that it has at least 25 different lawyers or firms participating in its service.

The referral services would be totally self-funded from fees from clients, lawyers and firms. A service should be able to receive a percentage of a lawyer's or firm's fees, if agreed to, because many local bar associations could not afford to operate the services based solely on client fees.

Lawyer referral services provide a real service to the public. Even when it is determined that a client does not need legal help, many referral services direct the client to an agency that can assist them.

**OPPONENTS  
SAY:**

No apparent opposition